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Also Office at:
85-93 66th Avenue, 1st Floor
Rego Park, New York 11374

Honorable Justice Allyne R. Ross
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

August 9, 2011

Re: Pre-Motion Denial Request
Gubin and BH Seven, LLC vs. Ambit et al. 11-CV-2483

Dear Honorable Justice Ross:

I respectfully again reiterate, on behalf of my clients, Nicole Gubin and BH Seven, LLC, that the Court deny the Defendants' request¹ for a pre-Answer motion to dismiss the now superfluous "detailed factual" Amended Summons and Amended Complaint. The purpose of such a motion to dismiss is clearly to continue to deflect attention from the Defendants' (collectively "Ambit") misconduct of defrauding the very individuals and customers who have enabled it to build the multi-level marketing pyramid and make profits. The Defense attorneys have failed to educate themselves as to the nature of this industry, as to the citizenship and residence of its parties as all the named corporate Defendant entities have one partner and/or President that being Jere W. Thompson, Jr.². They allege that there are other members without disclosing their identities, and as a result mislead your Honor. Most importantly they have failed to address that there is no signed agreement by the Plaintiffs with Ambit as to enforce an Arbitration Clause.

It is noteworthy that on August 9, 2011, I received an e-mail from Defense attorneys showing that Ambit has filed a written request for Arbitration with the American Arbitration Association in Texas³ ignoring the role of the Eastern District of New York ("EDNY") Federal Court to determine whether such a clause exists and/or survives in this action. To this demand, Defendants attached an Agreement that came into existence after the Plaintiffs joined Ambit, and

¹ To date, the August 3, 2011 letter has been posted to ECF, but has not been served on the Plaintiffs.

² Annexed hereto as Exhibit "A" are corporate records obtained from the Texas Secretary of State, as of July 19, 2011, which show that Jere W. Thompson, Jr. is the one partner and/or president of all the named entities. My diligent search did not reveal the residence or citizenship of any other members. Defense counsel allude in the August 3, 2011 letter that there are more members who are silent/secret which raises more malicious behavior by Ambit as to why these members are not named publicly.

³ Annexed hereto as Exhibit "B" is the letter and Arbitration Demand which on "Page 1", Paragraph I, states that the Plaintiffs have entered into an Application and Agreement "with Ambit in July 2007." The failure to provide the exact date of this alleged contract supports the Plaintiffs' Amended Complaint that the Defendants never entered into any Application and Agreement which contains an Arbitration Clause and the Defendants are not able to produce a dated document to their Defense attorneys.

even according to its terms circumvent mediation prior to arbitration. This action must remain in the EDNY as diversity of citizenship⁴ has been established pursuant to 28 USC §1335, and there are federal questions of law to which the United States Equal Employment Opportunity Commission (“EEOC”) has granted to Plaintiffs a right to sue letter, annexed hereto as Exhibit “C.” The work relationship and form of compensation paid to Plaintiffs qualifies for Federal protections as determined by the EEOC⁵. The very purpose of diversity jurisdiction is to provide a neutral forum for out-of-state Plaintiffs, to avoid local prejudices and influences in Texas if they were forced to litigate as strangers in Texas courts, and it would cause great hardship for its New York Plaintiffs and witnesses to present evidence in Texas.

Furthermore, Ambit’s internet based activities also invoke personal jurisdiction of the EDNY pursuant to the sliding scale standard. The Defendants’ operations through the internet, knowingly and repeated transmissions and the interactivity and commercial nature of the exchanges (consultants and customers information), all confirm specific personal jurisdiction for the EDNY to hear this action. Additionally, the State Long Arm Statutes likewise confirm jurisdiction of this Court as the Defendants have contacts with New York, its employees, consultants and customers. Finally, the EDNY has the jurisdiction to protect the Plaintiffs’ federally created rights to minimize the danger of hostility toward federally created rights and the Plaintiffs meet the over \$75,000 in damages requirement.

The Amended Summons/Amended Complaint is consistent with the pleadings standard articulated by the Supreme Court in Bell Atl. Corp. vs. Twombly⁶, and the Defendants’ application for the Pre-Answer Motion must be denied in its entirety. The U.S. Supreme Court has held that shifted pleading standards from “simple notice pleading” to a “more heightened form of pleading,” require that allegations in a complaint meet a standard of “plausibility” to survive a motion to dismiss. Barbosa vs. Continuum Health Partners, Inc., et al., 716 F. Supp.2d 210 (SDNY 2010)

Plaintiff Nicole Gubin entered into an employment agreement with the Defendants on or about July 22, 2007⁷. An agreement exists between the Plaintiffs and the Defendants. The

⁴ The Defendants’ and its various LLC “members” physical and corporate operations and activities are all performed out of the State of New York. The Court may review the following tests: (a) “locus of operations” which is the physical operations; (b) the “nerve center test” which is where the activities are controlled and directed; and (c) center of the “corporate activities” test which is *what* and *where* are center production or services are conducted. All of these tests will conclude that the Defendants Ambit and its members are in Dallas, Texas and/or outside the State of New York.

⁵ Moreover, employment discrimination cases do not need to contain specific facts establishing a prima facie case of discrimination. Swierkiewicz vs. Sorema N.A., 534 U.S. 506 (2002) A discrimination case must only include a short and plain statement of claim that give the Defendants fair notice of what the Plaintiffs’ claim is and the grounds upon which it rests. Id. at 512.

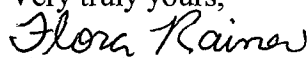
⁶ This Amended Complaint should not be dismissed pursuant to Fed. R. Civ. Proc. 12(b)(6) because the Plaintiffs have alleged enough facts to state a claim to relief that is plausible on its face. Bell Atl. Corp. vs. Twombly, 127 S.Ct. 1955 (2007), Ruth Fowler vs. Scores Holding Company, Inc., 677 F. Supp. 673, 2009 U.S. Dist. Lexis 122191 (SDNY 2009) Allegations of facts must be enough to raise a right to relief above the speculative level. Id. There are various circumstantial evidence in this case on all the Amended counts which establish “entitlement to relief.” (See also Papasan vs. Allain, 478 U.S. 265 (1986))

⁷ On October 18, 2010, the Plaintiff Nicole Gubin became a solo proprietor of a New York domestic

Plaintiff was orally solicited to join Ambit Energy, *Plaintiff's required information to join Ambit Energy was provided to Defendants by telephone through her immediate sponsor Yuriy Kasparov and Kasparov's sponsor whereby Plaintiff orally entered into this agreement*, National Consultant Steven Thompson approved Plaintiff's information and credit card payment over the telephone, Plaintiff never signed any written contract nor was she given any agreement or application to sign⁸. After Plaintiff's credit card payment was accepted through the telephone, Plaintiff received a starter kit in the mail several days later and access to Power Zone, access to the back office communications and real-time business monitoring software and reporting tools enabling Plaintiffs to be employed⁹ for Defendants, to sell its goods and services being gas and electricity energy supplies to customers and introduce new consultants on her downline on a pyramid scheme company structure. Plaintiffs would also receive weekly consultant leadership bonuses and monthly residual bonuses, and additional performance bonuses. Upon the execution of the agreement, the Plaintiff was never informed that she was subjecting herself to any binding arbitration clause or the laws of the State of Texas.

Every single federal and state law claim has been sufficiently pleaded in the Amended Summons/Amended Complaint. Each and every claim in the Amended Complaint satisfies the *plausibility* standard as the Plaintiffs have pled sufficient factual content that allows your Honor to draw the *reasonable inference* that the Defendants are liable for the misconduct alleged in all the counts of the Amended Complaint. *After reading the Plaintiffs' well-pleaded Amended Complaint*, Defendants and their attorneys who are not well versed in Ambit's structure, demonstrated vulnerability to fight in EDNY by pre-maturely applying for arbitration (even in violation of its current policies and procedures requiring mediation before arbitration), as they recognized the strength of the Plaintiffs' valid causes of actions.

The Plaintiffs request that the Defendants' August 3, 2011 letter requesting the scheduling of the pre-motion conference be denied to protect the interests of the Plaintiffs and the public and to avoid unnecessary burden to all parties and the Court, and allow this matter to proceed to discovery and trial.

Very truly yours,

 Flora Rainer, Esq.

limited liability company known BH Seven, LLC., and requested that her interests in Ambit Energy be transferred from her personal name to BH Seven. Currently, the Plaintiffs are titled Executive Consultants for Ambit Energy due to their success of bringing in new consultants and customers into the Defendants' business.

⁸ The Plaintiff was one of the original consultants in the State of New York, and initially consultants were signing up over the telephone without any written papers signed. Later, however, Defendants procedures required that new consultants sign an agreement, annexed to the Amended Complaint as Exhibit "A" and this information was entered by sponsoring consultants via Ambit Energy's internet website. Several weeks after new consultants' executed the written agreement, a start up kit arrives in the mail and consultants can access the Ambit website through which transactions are performed to sign up new consultants and new customers and to monitor the pyramid downline activities.

⁹ The Plaintiffs fall under EEOC's category of employees because they receive weekly payments and monthly residuals, as well as after 36 months they are vested into lifetime residual payments similar to pension and 401K plans based on Ambit Energy's terms of compensation unlike independent consultants who negotiate and submit their own compensations. Plaintiffs received a right to sue letter from EEOC for this matter (See Exhibit "C").

Reports Unit
P.O. Box 12028
Austin, Texas 78711-2028



Hope Andrade
Secretary of State

Office of the Secretary of State
PERIODIC REPORT - LIMITED PARTNERSHIP

File Number: 800529904

Page 1 of 1

Filing Fee: \$50

1. The limited partnership name is:
Ambit Energy, L.P.
2. It is organized under the laws of : *(set forth state or foreign country)*
Texas
3. The name of the registered agent is:
Jere W. Thompson, Jr
(Make changes here):
4. The registered office address, which is identical to the business office address of the registered agent in Texas, is:
**1801 N. Lamar Street, Ste. 200
Dallas, TX 75202**
(Make changes here-use street or building address; see Instructions):
5. The address of the principal office in the United States where the records are to be kept or made available is:
**1801 N. Lamar Street, Ste. 200
Dallas, TX 75202**
(Make changes here):

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Secretary of State of Texas
OCT 26 2009
Corporations Section

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SECRETARY OF STATE
OCT 26 2009
CLK 68
AUSTIN, TEXAS

6. The names and addresses of all general partners of the limited partnership are:
(Address changes for existing general partners are allowed. For name changes, see Instruction 6.)

<u>Name</u>	<u>Address</u>	<u>City/ State/Zip</u>
Ambit GenPar, Inc.	1801 N. Lamar Street, Ste. 200	Dallas, TX 75202

Execution:

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

Date: 10/8/09
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SECRETARY OF STATE

Signed on behalf of the limited partnership

JERE THOMPSON, JR., PRESIDENT
By (general partner)

CLK 68
AUSTIN, TEXAS

Phone: 512-475-2705

Come visit us on the Internet @ <http://www.sos.state.tx.us/>
Fax: 512-463-1423

Dial: 7-1-1 for Relay Services

" Δ "

FILED
In the Office of the
Secretary of State of Texas
AUG 10 2005

**CERTIFICATE OF LIMITED PARTNERSHIP
FOR
BVISTA ENERGY, L.P.**

The undersigned as the general partner of BVista Energy, L.P. (the ~~Partnership~~ ^{Corporation}) desiring to form a limited partnership pursuant to the Texas Revised Limited Partnership Act, as set forth in the Revised Civil Statutes of the State of Texas, hereby certifies and states as follows: Section

1. The name of the Partnership is BVista Energy, L.P.
2. The address of the registered office, and the name and address of the registered agent of the Partnership for service of process are as follows:

Spruce Systems, Inc.
14901 Quorum Drive
Suite 250
Dallas, Texas 75254

3. The address of the principal office of the Partnership where records are to be kept or made available is 14901 Quorum Drive, Suite 250, Dallas, Texas 75254, or at such other place as the General Partner (herein so called) from time to time may designate.

4. The name, mailing address and street address of the business or residence of the General Partner are:


Spruce Systems, Inc.
14901 Quorum Drive
Suite 250
Dallas, Texas 75254

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the 10th day of August, 2005.

GENERAL PARTNER:

SPRUCE SYSTEMS, INC.
a Texas corporation

By:


Jere W. Thompson, Jr.

Its:

President

FILED
In the Office of the
Secretary of State of Texas

APR 30 2008

**CERTIFICATE OF FORMATION
FOR
AMBIT HOLDINGS, LLC**

Corporations Section

The undersigned, acting as the sole organizer of a limited liability company under Titles 1 and 3 of the Texas Business Organizations Code (the "Code"), does hereby adopt the following Certificate of Formation for Ambit Holdings, LLC, a Texas limited liability company (the "Company"):

**ARTICLE I
NAME**

The name of the Company is Ambit Holdings, LLC.

**ARTICLE II
PURPOSE**

The purpose for which the Company is organized is the transaction of any or all lawful business for which limited liability companies may be organized under the Code.

**ARTICLE III
REGISTERED OFFICE AND AGENT**

The address of the Company's initial registered office in the State of Texas is 1801 N. Lamar Street, Suite 200, Dallas, Texas 75202, and the name of the Company's initial registered agent at that address shall be Jere W. Thompson, Jr.

**ARTICLE IV
INITIAL MEMBER**

The Company will be managed by its Managing Member. The name and address of the Managing Member is:

Name

Address

Ambit Systems, Inc.

1801 N. Lamar Street, Suite 200
Dallas, Texas 75202

**ARTICLE V
LIMITATION OF MEMBER LIABILITY**

A member of the Company shall not be liable to the Company or its members for monetary damages for an act or omission in the member's capacity as a manager, member or managing member except that this Article V does not eliminate or limit the liability of a member to the extent the member is found liable for (i) a breach of the member's duty of loyalty to the Company or its members; (ii) an act or omission not in good faith that constitutes a breach of

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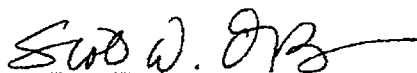
Secretary of State

duty of the member to the Company or an act or omission that involves intentional misconduct or a knowing violation of the law; (iii) a transaction from which the member received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the member's office; or (iv) an act or omission for which the liability of a member is expressly provided by an applicable statute. Any repeal or amendment of this Article V by the members of the Company shall be prospective only and shall not adversely affect any limitation on the liability of a member of the Company existing at the time of such repeal or amendment. In addition to the circumstances in which a member of the Company is not liable as set forth in the preceding sentences, a member shall not be liable to the fullest extent permitted by any provision of the statutes of Texas hereafter enacted that further limits the liability of a member or of a director of a corporation.

**ARTICLE VI
ORGANIZER**

The name and address of the organizer is Scot W. O'Brien, 2001 Bryan Street, Suite 3900, Dallas, Texas 75201.

IN WITNESS WHEREOF, this Certificate of Formation has been executed on April 28, 2008, by the undersigned.



Scot W. O'Brien

36242/I - 285002v1

Form 503
(Revised 01/06)

Return in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512 463-5709
Filing Fee: \$25



Assumed Name Certificate

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In the Office of the
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JUL 18 2008

Corporations Section

Assumed Name

The assumed name under which the business or professional service is, or is to be, conducted or rendered is: Ambit Energy

Entity Information

The name of the entity filing the assumed name is:

Ambit Holdings, LLC

State the name of the entity as currently shown in the records of the secretary of state or on its certificate of formation, if not filed with the secretary of state.

The filing entity is a: (Select the appropriate entity type below)

- ☐ For-profit Corporation
☐ Nonprofit Corporation
☐ Cooperative Association
☒ Limited Liability Company
☐ Other

- ☐ Professional Corporation
☐ Professional Limited Liability Company
☐ Professional Association
☐ Limited Partnership

Specify type of entity if there is no check box applicable.

The file number, if any, issued to the filing entity by the secretary of state is: 800972084

The state, country, or other jurisdiction of formation is: Texas

The registered or similar office of the entity in the jurisdiction of formation is:
1801 N. Lamar Street, Suite 200, Dallas, Texas 75202

☒ The entity is required to maintain a registered office and agent in Texas. The address of its registered office in Texas and the name of the registered agent at such address is:

Jere W. Thompson, Jr.

1801 N. Lamar Street, Suite 200, Dallas, Texas 75202

The address of the principal office of the entity (if not the same as the registered office) is:

☐ The entity is not required to maintain a registered office and agent in Texas. Its office address in

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in Texas is: _____

☐ The entity is not incorporated, organized or associated under the laws of Texas. The address of the principal place of business in this state is: _____

The office address of the entity is: _____

1801 N. Lamar Street, Suite 200, Dallas, Texas 75202

Period of Duration

☒ The period during which the assumed name will be used is 10 years from the date of filing with the secretary of state.

OR

☐ The period during which the assumed name will be used is _____ years from the date of filing with the secretary of state (not to exceed 10 years).

OR

☐ The assumed name will be used until _____ (not to exceed 10 years).

mm/dd/yyyy

County or Counties in which Assumed Name Used

The county or counties where business or professional services are being or are to be conducted or rendered under the assumed name are:

☒ All counties

☐ All counties with the exception of the following counties: _____

☐ Only the following counties: _____

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument. If the undersigned is acting in the capacity of an attorney in fact for the entity, the undersigned certifies that the entity has duly authorized the undersigned in writing to execute this document.

Date:

July 18, 2008



Signature and title of authorized person(s) (see instructions)

FILED
In the Office of the
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NOV 02 2006

**CERTIFICATE OF FORMATION
FOR
AMBIT GROUP, L.P.**

Corporations Section

The undersigned as the general partner of Ambit Group, L.P. (the "Partnership"), desiring to form a limited partnership pursuant to the Texas Limited Partnership Law under Titles 1 and 4 of the Texas Business Organizations Code, as set forth in the Revised Civil Statutes of the State of Texas, hereby certifies and states as follows:

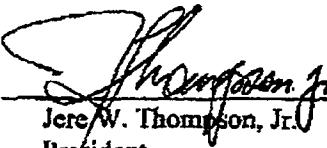
1. The name of the Partnership is Ambit Group, L.P.
2. The type of entity being formed is a limited partnership.
3. The street address of the initial registered office of the Partnership is 1801 N. Lamar Street, Suite 200, Dallas, Texas 75202, and the name of the initial registered agent of the Partnership for service of process at that office is Ambit Systems, Inc.
4. The address of the principal office of the Partnership where records are to be kept or made available is 1801 N. Lamar Street, Suite 200, Dallas, Texas 75202, or at such other place as the General Partner (herein so called) from time to time may designate.
5. The name, mailing address and street address of the business or residence of the General Partner are:

Ambit Systems, Inc.
1801 N. Lamar Street
Suite 200
Dallas, Texas 75202

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the 2nd day of November, 2006.

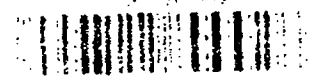
GENERAL PARTNER:

AMBIT SYSTEMS, INC.
a Texas corporation

By: 
Jere W. Thompson, Jr.
Its: President

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**CERTIFICATE OF FORMATION
FOR
AMBIT TEXAS, LLC**

APR 08 2008

Corporations Section

The undersigned, acting as the sole organizer of a limited liability company under Titles 1 and 3 of the Texas Business Organizations Code (the "Code"), does hereby adopt the following Certificate of Formation for Ambit Texas, LLC, a Texas limited liability company (the "Company"):

**ARTICLE I
NAME**

The name of the Company is Ambit Texas, LLC.

**ARTICLE II
PURPOSE**

The purpose for which the Company is organized is the transaction of any or all lawful business for which limited liability companies may be organized under the Code.

**ARTICLE III
REGISTERED OFFICE AND AGENT**

The address of the Company's initial registered office in the State of Texas is 1801 N. Lamar Street, Suite 200, Dallas, Texas 75202, and the name of the Company's initial registered agent at that address shall be Jere W. Thompson, Jr.

**ARTICLE IV
INITIAL MEMBER**

The Company will be managed by its sole member. The name and address of the sole member is:

Name

Address

Ambit Energy, L.P.

1801 N. Lamar Street, Suite 200
Dallas, Texas 75202

**ARTICLE V
LIMITATION OF MEMBER LIABILITY**

A member of the Company shall not be liable to the Company or its members for monetary damages for an act or omission in the member's capacity as a manager, member or managing member except that this Article V does not eliminate or limit the liability of a member to the extent the member is found liable for (i) a breach of the member's duty of loyalty to the

Company or its members; (ii) an act or omission not in good faith that constitutes a breach of duty of the member to the Company or an act or omission that involves intentional misconduct or a knowing violation of the law; (iii) a transaction from which the member received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the member's office; or (iv) an act or omission for which the liability of a member is expressly provided by an applicable statute. Any repeal or amendment of this Article V by the members of the Company shall be prospective only and shall not adversely affect any limitation on the liability of a member of the Company existing at the time of such repeal or amendment. In addition to the circumstances in which a member of the Company is not liable as set forth in the preceding sentences, a member shall not be liable to the fullest extent permitted by any provision of the statutes of Texas hereafter enacted that further limits the liability of a member or of a director of a corporation.

ARTICLE VI ORGANIZER

The name and address of the organizer is Scot W. O'Brien, 2001 Bryan Street, Suite 3900, Dallas, Texas 75201.

IN WITNESS WHEREOF, this Certificate of Formation has been executed on April 8, 2008, by the undersigned.


Scot W. O'Brien

36242/1 - 284653v1

Form 503
(Revised 01/06)

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Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512 463-5709
Filing Fee: \$25



Assumed Name Certificate

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Corporations Section

Assumed Name

The assumed name under which the business or professional service is, or is to be, conducted or rendered is: Ambit Energy

Entity Information

The name of the entity filing the assumed name is:

Ambit Texas, LLC

State the name of the entity as currently shown in the records of the secretary of state or on its certificate of formation, if not filed with the secretary of state.

The filing entity is a: (Select the appropriate entity type below)

- | | |
|---|---|
| <input type="checkbox"/> For-profit Corporation | <input type="checkbox"/> Professional Corporation |
| <input type="checkbox"/> Nonprofit Corporation | <input type="checkbox"/> Professional Limited Liability Company |
| <input type="checkbox"/> Cooperative Association | <input type="checkbox"/> Professional Association |
| <input checked="" type="checkbox"/> Limited Liability Company | <input type="checkbox"/> Limited Partnership |
| <input type="checkbox"/> Other | |

Specify type of entity if there is no check box applicable.

The file number, if any, issued to the filing entity by the secretary of state is: 800962414

The state, country, or other jurisdiction of formation is: Texas

The registered or similar office of the entity in the jurisdiction of formation is:
1801 N. Lamar Street, Suite 200, Dallas, Texas 75202

☒ The entity is required to maintain a registered office and agent in Texas. The address of its registered office in Texas and the name of the registered agent at such address is:

Jere W. Thompson, Jr.

1801 N. Lamar Street, Suite 200, Dallas, Texas 75202

The address of the principal office of the entity (if not the same as the registered office) is:

☐ The entity is not required to maintain a registered office and agent in Texas. Its office address is:

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JUL 18 2008

Secretary of State

in Texas is: _____

☐ The entity is not incorporated, organized or associated under the laws of Texas. The address of the principal place of business in this state is: _____

The office address of the entity is: _____

1801 N. Lamar Street, Suite 200, Dallas, Texas 75202

Period of Duration

☒ The period during which the assumed name will be used is 10 years from the date of filing with the secretary of state.

OR

☐ The period during which the assumed name will be used is _____ years from the date of filing with the secretary of state (not to exceed 10 years).

OR

☐ The assumed name will be used until _____ (not to exceed 10 years).
mm/dd/yyyy

County or Counties in which Assumed Name Used

The county or counties where business or professional services are being or are to be conducted or rendered under the assumed name are:

☒ All counties

☐ All counties with the exception of the following counties: _____

☐ Only the following counties: _____

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument. If the undersigned is acting in the capacity of an attorney in fact for the entity, the undersigned certifies that the entity has duly authorized the undersigned in writing to execute this document.

Date: July 18, 2008



Signature and title of authorized person(s) (see instructions)

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In the Office of the
Secretary of State of Texas

MAY 15 2008

**CERTIFICATE OF FORMATION
FOR
AMBIT ENERGY HOLDINGS, LLC**

Corporations Section

The undersigned, acting as the sole organizer of a limited liability company under Titles 1 and 3 of the Texas Business Organizations Code (the "Code"), does hereby adopt the following Certificate of Formation for Ambit Energy Holdings, LLC, a Texas limited liability company (the "Company"):

**ARTICLE I
NAME**

The name of the Company is Ambit Energy Holdings, LLC.

**ARTICLE II
PURPOSE**

The purpose for which the Company is organized is the transaction of any or all lawful business for which limited liability companies may be organized under the Code.

**ARTICLE III
REGISTERED OFFICE AND AGENT**

The address of the Company's initial registered office in the State of Texas is 1801 N. Lamar Street, Suite 200, Dallas, Texas 75202, and the name of the Company's initial registered agent at that address shall be Jere W. Thompson, Jr.

**ARTICLE IV
INITIAL MEMBERS**

The Company will be managed by its members. The name and address of the sole and managing member are:

<u>Name</u>	<u>Address</u>
Ambit Holdings, LLC	1801 N. Lamar Street, Suite 200 Dallas, Texas 75202

**ARTICLE V
LIMITATION OF MANAGER LIABILITY**

Neither a manager nor a managing member of the Company shall be liable to the Company or its members for monetary damages for an act or omission in such person's capacity as a manager or managing member, except that this Article V does not eliminate or limit the liability of a manager or managing member to the extent the manager or managing member is found liable for (i) a breach of the manager's or managing member's duty of loyalty to the

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Company or its members; (ii) an act or omission not in good faith that constitutes a breach of duty of the manager or managing member to the Company or an act or omission that involves intentional misconduct or a knowing violation of the law; (iii) a transaction from which the manager or managing member received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the manager's or managing member's office; or (iv) an act or omission for which the liability of a manager or managing member is expressly provided by an applicable statute. Any repeal or amendment of this Article V by the members of the Company shall be prospective only and shall not adversely affect any limitation on the liability of a manager or managing member of the Company existing at the time of such repeal or amendment. In addition to the circumstances in which a manager or managing member of the Company is not liable as set forth in the preceding sentences, a member shall not be liable to the fullest extent permitted by any provision of the statutes of Texas hereafter enacted that further limits the liability of a manager, managing member or a director of a corporation.

**ARTICLE VI
ORGANIZER**

The name and address of the organizer is Scot W. O'Brien, 2001 Bryan Street, Suite 3900, Dallas, Texas 75201.

IN WITNESS WHEREOF, this Certificate of Formation has been executed on May 15, 2008, by the undersigned.


Scot W. O'Brien

36242/1 - 288359v1

May 14, 2008

Ambit Energy Holdings, LLC
1801 N Tamar Street
Suite 200
Dallas, Texas 75202


Gentlemen:

The undersigned hereby consents to the use of the name "Ambit Energy Holdings, LLC" for the purpose of forming a limited liability company in Texas, effective as of the date of this letter.

If you need additional information, please contact the undersigned.

AMBIT ENERGY, L.P.
a Texas limited partnership

By: Ambit Systems, Inc.
Its: General Partner

By: 
Jere W. Thompson, Jr.
Its: President

36247/1 288361v1

20052904

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MAY 15 2008
Secretary of State

FILED
In the Office of the
Secretary of State of Texas

NOV 01 2006

Corporations Section

**CERTIFICATE OF FORMATION
FOR
AMBIT SYSTEMS, INC.**

ARTICLE ONE

The name of the corporation is Ambit Systems, Inc. (the "Corporation").

ARTICLE TWO

The Corporation is organized for the purpose of engaging in the transaction of any and all lawful activity and/or business for which corporations may be organized under the Texas Business Organizations Code, as amended (the "Code").

ARTICLE THREE

The total number of shares of stock which the Corporation shall have authority to issue is one hundred thousand (100,000) shares of Common Stock having a par value of \$0.01 per share.

ARTICLE FOUR

A. The number of directors constituting the initial Board of Directors is one (1), and the name and address of the individual who is to serve as the initial director until the first annual meeting of shareholders, or until his successors are elected and qualified, are as follows:

Name

Address

Jere W. Thompson, Jr.

1801 N. Lamar Street
Suite 200
Dallas, Texas 75202

B. Elections of directors need not be done by written ballot unless the Bylaws of the Corporation shall otherwise provide.

C. The Board of Directors is expressly authorized to adopt, alter, amend or repeal the Bylaws of the Corporation. In addition to the powers and authority expressly conferred upon them by this Certificate of Formation or by statute, the directors are empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject to the provisions of the Code, this Certificate of Formation, and any Bylaws adopted by the shareholders. However, notwithstanding any provision in this Certificate of Formation to the contrary, the shareholders may not adopt, repeal or amend the Bylaws of the Corporation without the affirmative vote of a majority of the votes entitled to be cast by the holders of the Corporation's outstanding capital stock. Additionally, no Bylaws hereafter adopted by the shareholders shall invalidate any prior act of the directors which would have been valid if such Bylaws had not been adopted.

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NOV 01 2006

Secretary of State

ARTICLE FIVE

Nothing contained in this Certificate of Formation shall prohibit or impair the Corporation's power and authority to contractually grant preferential rights to purchase or subscribe for shares of any class of stock of the Corporation or any notes, debentures, bonds or securities convertible into or carrying options, warrants or rights to purchase shares of any class, as the Board of Directors, at its discretion, from time to time may grant and at such price as the Board of Directors, at its discretion, may fix.

ARTICLE SIX

The Corporation shall indemnify each person who is or was a director of the Corporation to the fullest extent permissible under applicable Texas law and any successor statutes under the Code. The Board of Directors of the Corporation, in its sole discretion, shall have the power, on behalf of the Corporation, to indemnify such other persons for whom indemnification is permitted by such provisions of the Code, to the fullest extent permissible thereunder, and may purchase such liability indemnification and/or other similar insurance as the Board of Directors from time to time shall deem necessary or appropriate, in its sole discretion.

The Corporation may purchase and maintain liability, indemnification and/or similar insurance on behalf of itself, and/or for any person who is or was a director, officer, employee or agent of the Corporation or who is or was serving at the request of the Corporation as a director, officer, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, against any liability asserted against and/or incurred by the Corporation or person serving in such a capacity or arising out of his/her/its status as such a person or entity, whether or not the Corporation would otherwise have the power to indemnify such person against that liability.

The power to indemnify and/or obtain insurance provided in this Article Seven shall be cumulative of any other power of the Board of Directors and/or any rights to which such a person or entity may be entitled by law, this Certificate of Formation and/or Bylaws of the Corporation, contract, other agreement, vote or otherwise.

ARTICLE SEVEN

The street address of the initial registered office of the Corporation is 1801 N. Lamar Street, Suite 200, Dallas, Texas 75202, and the name of its initial registered agent at such address is Jere W. Thompson, Jr.

ARTICLE EIGHT

No contract or other transaction between the Corporation and any person, firm, association or corporation and no act of the Corporation, shall, in the absence of fraud, be

invalidated or in any way affected by the fact that any of the directors of the Corporation is pecuniarily or otherwise interested, directly or indirectly, in such contract, transaction or act, or is related to or interested in such person, firm, association or corporation as a director, shareholder, officer, employee, member or otherwise. Any director so interested or related who is present at any meeting of the Board of Directors or committee of directors at which action on any such contract, transaction or act is taken may be counted in determining the presence of a quorum at such meeting and the vote at such meeting of any such director may be counted in determining the approval of any such contract, transaction or act. No director so interested or related shall, because of such interest or relationship, be disqualified from holding his office or be liable to the Corporation or to any shareholder or creditor thereof for any loss incurred by the Corporation under or by reason of such contract, transaction or act, or be accountable for any gains or profits he may have realized therein.

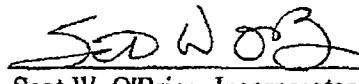
ARTICLE NINE

No member of the Board of Directors of the Corporation shall be liable, personally or otherwise, in any way to the Corporation or its shareholders for monetary damages caused in any way by an act or omission occurring in the director's capacity as a director of the Corporation, except as otherwise expressly provided by applicable Texas law.

ARTICLE TEN

The name and address of the incorporator is Scot W. O'Brien, Hallett & Perrin, P.C., 2001 Bryan Street, Suite 3900, Dallas, Texas 75201.

IN WITNESS WHEREOF, the Incorporator has executed this Certificate of Formation this the 1st day of November, 2006.


Scot W. O'Brien, Incorporator
HALLETT & PERRIN, P.C.
2001 Bryan Street, Suite 3900
Dallas, Texas 75201

102302907171

TX 2010

Ver. 1.0

05-102

(9-09/29)

Tcode 13196

TEXAS FRANCHISE TAX PUBLIC INFORMATION REPORT

To be filed by Corporations, Limited Liability Companies (LLCS) and Financial Institutions

This report MUST be signed and filed to satisfy franchise tax requirements

Taxpayer number

32021831188

Taxpayer name

AMBIT SYSTEMS, INC

Mailing address

1801 N LAMAR ST SUITE 200

City

DALLAS

State

TX

ZIP Code

75202

Plus 4

Secretary of State file number or

Comptroller file number

0800728509

Report year

2010

You have certain rights under Chapter 552 and 559, Government Code, to review, request, and correct information we have on file about you. Contact us at: (512) 463-4600, or (800) 252-1381, toll free nationwide.

☐ Check box if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.

Principal office

1801 N LAMAR ST SUITE 200

DALLAS

TX 75202

Principal place of business

1801 N LAMAR ST SUITE 200

DALLAS

TX 75202



3202183118810

Please sign below!

Officer, director and member information is reported as of the date a Public Information Report is completed. The information is updated annually as part of the franchise tax report. There is no requirement or procedure for supplementing the information as officers, directors, or members change throughout the year.

SECTION A Name, title and mailing address of each officer, director or member.

Name

Title

Director

m m d d y y

☐ YES

Term expiration

JERE W THOMPSON JR

DIRECTOR

Mailing address

1801 N LAMAR ST. STE 200

City

DALLAS

State

TX

ZIP Code

75202

Name

Title

Director

m m d d y y

☐ YES

Term expiration

Mailing address

City

State

ZIP Code

Name

Title

Director

m m d d y y

☐ YES

Term expiration

Mailing address

City

State

ZIP Code

SECTION B Enter the information required for each corporation or LLC, if any, in which this entity owns an interest of ten percent (10%) or more.

Name of owned (subsidiary) corporation or limited liability company

State of formation

Texas SOS file number, if any

Percentage of Ownership

NONE

Name of owned (subsidiary) corporation or limited liability company

State of formation

Texas SOS file number, if any

Percentage of Ownership

SECTION C Enter the information required for each corporation or LLC, if any, that owns an interest of ten percent (10%) or more in this entity

or limited liability company.

Name of owned (parent) corporation or limited liability company

State of formation

Texas SOS file number, if any

Percentage of Ownership

NONE

Registered agent and registered office currently on file. (See instructions if you need to make changes)

Check box if you need forms to change

Agent: JERE W THOMPSON JR.

☐ the registered agent or registered office information.

Office: 1801 N. LAMAR STREET STE 200

City
DALLAS

State
TX

ZIP Code
75202

The above information is required by Section 171.203 of the Tax Code for each corporation or limited liability company that files a Texas Franchise Tax Report. Use additional sheets for Sections A, B, and C, if necessary. The information will be available for public inspection.

I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief, as of the date below, and that a copy of this report has been mailed to each person named in this report who is an officer, director or member and who is not currently employed by this, or a related, corporation or limited liability company.

sign here

[Signature]

Title

PRESIDENT

Date

07/16/2010

Area code and phone number

214-270-1795

Texas Comptroller Official Use Only

VE/DE

☐

PIR IND

☐



FILED
In the Office of the
Secretary of State of Texas
JUN 13 2008
Corporations Section

**CERTIFICATE OF FORMATION
FOR
AMBIT GENPAR, INC.**

The undersigned, being a natural person of the age of eighteen (18) years or more, acting as the incorporator of a corporation under the Texas Business Organizations Code hereby adopts the following Certificate of Formation for such corporation:

ARTICLE ONE

The name of the corporation is Ambit GenPar, Inc. (the "Corporation").

ARTICLE TWO

The Corporation is organized for the purpose of engaging in the transaction of any and all lawful activity and/or business for which corporations may be organized under the Texas Business Organizations Code, as amended (the "Code").

ARTICLE THREE

The total number of shares of stock which the Corporation shall have authority to issue is one hundred thousand (100,000) shares of Common Stock having a par value of \$0.01 per share.

ARTICLE FOUR

A. The number of directors constituting the initial Board of Directors is one (1), and the name and address of the individual who is to serve as the initial director until the first annual meeting of shareholders, or until his successors are elected and qualified, are as follows:

Name

Address

Jere W. Thompson, Jr.

1801 N. Lamar Street, Suite 200
Dallas, Texas 75202

B. Elections of directors need not be done by written ballot unless the Bylaws of the Corporation shall otherwise provide.

C. The Board of Directors is expressly authorized to adopt, alter, amend or repeal the Bylaws of the Corporation. In addition to the powers and authority expressly conferred upon them by this Certificate of Formation or by statute, the directors are empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject to the provisions of the Code, this Certificate of Formation, and any Bylaws adopted by the shareholders. However, notwithstanding any provision in this Certificate of Formation to the contrary, the shareholders may not adopt, repeal or amend the Bylaws of the Corporation without the affirmative vote of a majority of the votes entitled to be cast by the holders of the Corporation's outstanding capital stock. Additionally, no Bylaws hereafter adopted by the

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JUN 13 2008

Secretary of State

shareholders shall invalidate any prior act of the directors which would have been valid if such Bylaws had not been adopted.

ARTICLE FIVE

Nothing contained in this Certificate of Formation shall prohibit or impair the Corporation's power and authority to contractually grant preferential rights to purchase or subscribe for shares of any class of stock of the Corporation or any notes, debentures, bonds or securities convertible into or carrying options, warrants or rights to purchase shares of any class, as the Board of Directors, at its discretion, from time to time may grant and at such price as the Board of Directors, at its discretion, may fix.

ARTICLE SIX

The Corporation shall indemnify each person who is or was a director of the Corporation to the fullest extent permissible under applicable Texas law and any successor statutes under the Code. The Board of Directors of the Corporation, in its sole discretion, shall have the power, on behalf of the Corporation, to indemnify such other persons for whom indemnification is permitted by such provisions of the Code, to the fullest extent permissible thereunder, and may purchase such liability indemnification and/or other similar insurance as the Board of Directors from time to time shall deem necessary or appropriate, in its sole discretion.

The Corporation may purchase and maintain liability, indemnification and/or similar insurance on behalf of itself, and/or for any person who is or was a director, officer, employee or agent of the Corporation or who is or was serving at the request of the Corporation as a director, officer, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, against any liability asserted against and/or incurred by the Corporation or person serving in such a capacity or arising out of his/her/its status as such a person or entity, whether or not the Corporation would otherwise have the power to indemnify such person against that liability.

The power to indemnify and/or obtain insurance provided in this Article Six shall be cumulative of any other power of the Board of Directors and/or any rights to which such a person or entity may be entitled by law, this Certificate of Formation and/or Bylaws of the Corporation, contract, other agreement, vote or otherwise.

ARTICLE SEVEN

The street address of the initial registered office of the Corporation is 1801 N. Lamar Street, Suite 200, Dallas, Texas 75202, and the name of its initial registered agent at such address is Jere W Thompson, Jr

ARTICLE EIGHT

No contract or other transaction between the Corporation and any person, firm, association or corporation and no act of the Corporation, shall, in the absence of fraud, be invalidated or in any way affected by the fact that any of the directors of the Corporation is pecuniarily or otherwise interested, directly or indirectly, in such contract, transaction or act, or is related to or interested in such person, firm, association or corporation as a director, shareholder, officer, employee, member or otherwise. Any director so interested or related who is present at any meeting of the Board of Directors or committee of directors at which action on any such contract, transaction or act is taken may be counted in determining the presence of a quorum at such meeting and the vote at such meeting of any such director may be counted in determining the approval of any such contract, transaction or act. No director so interested or related shall, because of such interest or relationship, be disqualified from holding his office or be liable to the Corporation or to any shareholder or creditor thereof for any loss incurred by the Corporation under or by reason of such contract, transaction or act, or be accountable for any gains or profits he may have realized therein.

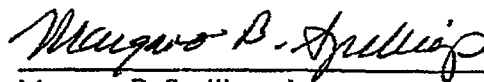
ARTICLE NINE

No member of the Board of Directors of the Corporation shall be liable, personally or otherwise, in any way to the Corporation or its shareholders for monetary damages caused in any way by an act or omission occurring in the director's capacity as a director of the Corporation, except as otherwise expressly provided by applicable Texas law.

ARTICLE TEN

The name and address of the incorporator is Margaret B. Spellings, Hallett & Perrin, P.C., 2001 Bryan Street, Suite 3900, Dallas, Texas 75201.

IN WITNESS WHEREOF, the Incorporator has executed this Certificate of Formation on June 11, 2008.



Margaret B. Spellings, Incorporator
HALLETT & PERRIN, P.C.
2001 Bryan Street, Suite 3900
Dallas, Texas 75201

June 12, 2008

Ambit GenPar, Inc.
1801 N. Lamar Street
Suite 200
Dallas, Texas 75202


Gentlemen:

The undersigned hereby consent to the use of the name "Ambit GenPar, Inc." for the purpose of forming a corporation in Texas, effective as of the date of this letter.

If you need additional information, please contact the undersigned.

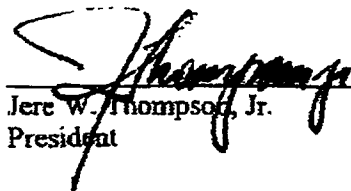
AMBIT ENERGY, L.P.
a Texas limited partnership

By: Ambit Systems, Inc.
Its: General Partner

By: 
Jere W. Thompson, Jr.
Its: President

AMBIT HOLDINGS, LLC,
A Texas limited liability company


By: Ambit Systems, Inc.
Its: Managing Member

By: 
Jere W. Thompson, Jr.
Its: President

AMBIT TEXAS, LLC,
A Texas limited liability company

By Ambit Energy, L.P.,
a Texas limited partnership,
Its Managing Member

By: Ambit Systems, Inc.
Its: General Partner

By: 
Jere W. Thompson, Jr.
Its: President

36242/1 - 289764v1

FILED
In the Office of the
Secretary of State of Texas

MAY 07 2007

Corporations Section

**CERTIFICATE OF FORMATION
FOR
AMBIT MARKETING, L.P.**

The undersigned as the general partner of Ambit Marketing, L.P. (the "Partnership"), desiring to form a limited partnership pursuant to the Texas Limited Partnership Law under Titles 1 and 4 of the Texas Business Organizations Code, as set forth in the Revised Civil Statutes of the State of Texas, hereby certifies and states as follows:

1. The name of the Partnership is Ambit Marketing, L.P.
2. The type of entity being formed is a limited partnership.
3. The street address of the initial registered office of the Partnership is 1801 N. Lamar Street, Suite 200, Dallas, Texas 75202, and the name of the initial registered agent of the Partnership for service of process at that office is Ambit Systems, Inc.
4. The address of the principal office of the Partnership where records are to be kept or made available is 1801 N. Lamar Street, Suite 200, Dallas, Texas 75202, or at such other place as the General Partner (herein so called) from time to time may designate.
5. The name, mailing address and street address of the business or residence of the General Partner are:

Ambit Systems, Inc.
1801 N. Lamar Street
Suite 200
Dallas, Texas 75202

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the 4th day of May, 2007.

GENERAL PARTNER:

AMBIT SYSTEMS, INC.
a Texas corporation

By: _____

Jere W. Thompson, Jr.

Its: President

36242/1 - 270133v1

RECORDED
MAY 07 2007
Secretary of State

FILED
In the Office of the
Secretary of State of Texas

JUN 13 2008

**CERTIFICATE OF FORMATION
FOR
AMBIT MANAGEMENT, INC.**

Corporations Section

The undersigned, being a natural person of the age of eighteen (18) years or more, acting as the incorporator of a corporation under the Texas Business Organizations Code hereby adopts the following Certificate of Formation for such corporation:

ARTICLE ONE

The name of the corporation is Ambit Management, Inc. (the "Corporation").

ARTICLE TWO

The Corporation is organized for the purpose of engaging in the transaction of any and all lawful activity and/or business for which corporations may be organized under the Texas Business Organizations Code, as amended (the "Code").

ARTICLE THREE

The total number of shares of stock which the Corporation shall have authority to issue is one hundred thousand (100,000) shares of Common Stock having a par value of \$0.01 per share.

ARTICLE FOUR

A. The number of directors constituting the initial Board of Directors is one (1), and the name and address of the individuals who is to serve as the initial director until the first annual meeting of shareholders, or until his successor is elected and qualified, is as follows:

<u>Name</u>	<u>Address</u>
Jere W. Thompson, Jr.	1801 N. Lamar Street, Suite 200 Dallas, Texas 75202

B. Elections of directors need not be done by written ballot unless the Bylaws of the Corporation shall otherwise provide.

C. The Board of Directors is expressly authorized to adopt, alter, amend or repeal the Bylaws of the Corporation. In addition to the powers and authority expressly conferred upon them by this Certificate of Formation or by statute, the directors are empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject to the provisions of the Code, this Certificate of Formation, and any Bylaws adopted by the shareholders. However, notwithstanding any provision in this Certificate of Formation to the contrary, the shareholders may not adopt, repeal or amend the Bylaws of the Corporation without the affirmative vote of a majority of the votes entitled to be cast by the holders of the Corporation's outstanding capital stock. Additionally, no Bylaws hereafter adopted by the

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JUN 13 2008

Secretary of State

shareholders shall invalidate any prior act of the directors which would have been valid if such Bylaws had not been adopted.

ARTICLE FIVE

Nothing contained in this Certificate of Formation shall prohibit or impair the Corporation's power and authority to contractually grant preferential rights to purchase or subscribe for shares of any class of stock of the Corporation or any notes, debentures, bonds or securities convertible into or carrying options, warrants or rights to purchase shares of any class, as the Board of Directors, at its discretion, from time to time may grant and at such price as the Board of Directors, at its discretion, may fix.

ARTICLE SIX

The Corporation shall indemnify each person who is or was a director of the Corporation to the fullest extent permissible under applicable Texas law and any successor statutes under the Code. The Board of Directors of the Corporation, in its sole discretion, shall have the power, on behalf of the Corporation, to indemnify such other persons for whom indemnification is permitted by such provisions of the Code, to the fullest extent permissible thereunder, and may purchase such liability indemnification and/or other similar insurance as the Board of Directors from time to time shall deem necessary or appropriate, in its sole discretion.

The Corporation may purchase and maintain liability, indemnification and/or similar insurance on behalf of itself, and/or for any person who is or was a director, officer, employee or agent of the Corporation or who is or was serving at the request of the Corporation as a director, officer, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, against any liability asserted against and/or incurred by the Corporation or person serving in such a capacity or arising out of his/her/its status as such a person or entity, whether or not the Corporation would otherwise have the power to indemnify such person against that liability.

The power to indemnify and/or obtain insurance provided in this Article Seven shall be cumulative of any other power of the Board of Directors and/or any rights to which such a person or entity may be entitled by law, this Certificate of Formation and/or Bylaws of the Corporation, contract, other agreement, vote or otherwise.

ARTICLE SEVEN

The street address of the initial registered office of the Corporation is 1801 N. Lamar St., Suite 200, Dallas, Texas 75202, and the name of its initial registered agent at such address is Jere W. Thompson, Jr.

ARTICLE EIGHT

No contract or other transaction between the Corporation and any person, firm, association or corporation and no act of the Corporation, shall, in the absence of fraud, be invalidated or in any way affected by the fact that any of the directors of the Corporation is pecuniarily or otherwise interested, directly or indirectly, in such contract, transaction or act, or is related to or interested in such person, firm, association or corporation as a director, shareholder, officer, employee, member or otherwise. Any director so interested or related who is present at any meeting of the Board of Directors or committee of directors at which action on any such contract, transaction or act is taken may be counted in determining the presence of a quorum at such meeting and the vote at such meeting of any such director may be counted in determining the approval of any such contract, transaction or act. No director so interested or related shall, because of such interest or relationship, be disqualified from holding his office or be liable to the Corporation or to any shareholder or creditor thereof for any loss incurred by the Corporation under or by reason of such contract, transaction or act, or be accountable for any gains or profits he may have realized therein.

ARTICLE NINE

No member of the Board of Directors of the Corporation shall be liable, personally or otherwise, in any way to the Corporation or its shareholders for monetary damages caused in any way by an act or omission occurring in the director's capacity as a director of the Corporation, except as otherwise expressly provided by applicable Texas law.

ARTICLE TEN

The name and address of the incorporator is Margaret B. Spellings, Hallett & Perrin, P.C., 2001 Bryan Street, Suite 3900, Dallas, Texas 75201.

IN WITNESS WHEREOF, the Incorporator has executed this Certificate of Formation on June 11, 2008.



Margaret B. Spellings, Incorporator
HALLETT & PERRIN, P.C.
2001 Bryan Street, Suite 3900
Dallas, Texas 75201

36242/1 - 284611v1

June 12, 2008

Ambit Management, Inc.
1801 N Lamar Street
Suite 200
Dallas, Texas 75202

Gentlemen:

The undersigned hereby consent to the use of the name "Ambit Management, Inc." for the purpose of forming a corporation in Texas, effective as of the date of this letter.

If you need additional information, please contact the undersigned.

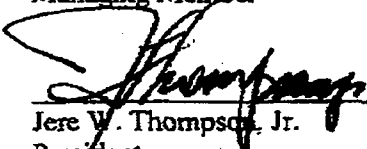
AMBIT ENERGY, L.P.
a Texas limited partnership

By: Ambit Systems, Inc.
Its: General Partner

By: 
Jere W. Thompson, Jr.
Its: President

AMBIT HOLDINGS, LLC,
A Texas limited liability company

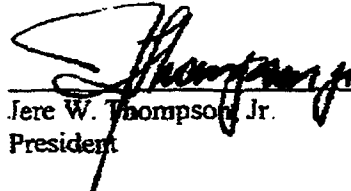
By: Ambit Systems, Inc.
Its: Managing Member

By: 
Jere W. Thompson, Jr.
Its: President

AMBIT TEXAS, LLC,
A Texas limited liability company

By Ambit Energy, L.P.,
a Texas limited partnership,
Its Managing Member

By: Ambit Systems, Inc.
Its: General Partner

By: 
Jere W. Thompson Jr.
Its: President

36242/1 - 289764v1

Reports Unit
P.O. Box 12028
Austin, Texas 78711-2028



Hope Andrade
Secretary of State

Office of the Secretary of State
PERIODIC REPORT - LIMITED PARTNERSHIP

File Number: **10451210**
Filing Fee: **\$50**

Page 1 of 2

1. The entity name of the limited partnership is:
GREENWAY HOLDINGS, L.P.
2. It is organized under the laws of: *(set forth state or foreign country)*
Texas
3. The name of the registered agent is:
Jere W Thompson, Jr
(Make changes here-cannot be entity named above):

FILED
In the Office of the
Secretary of State of Texas
OCT 28 2010
Corporations Section

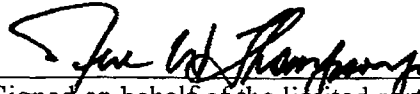
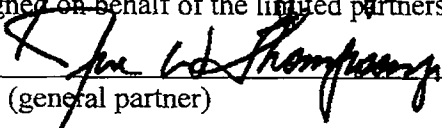
4. The registered office address, which is identical to the business address of the registered agent in Texas, is:
1801 N Lamar St Ste 200
Dallas, TX 75202
(Make changes here-use street or building address; see Instructions):
5. The address of the principal office in the United States where the records are to be kept or made available is:
1801 N Lamar St , Ste 200
Dallas, TX 75202
(Make changes here-use street or building address; see Instructions):
6. The names and addresses of all general partners of the limited partnership are:
(Address changes are allowed; a name change of an existing general partner requires an amendment; see Instruction 6.)

<u>Name</u>	<u>Address</u>	<u>City/ State/Zip</u>
Jere W Thompson Jr	1801 N Lamar St Ste 200	Dallas, TX 75202

RECEIVED
SECRETARY OF STATE
OCT 28 2010
CLK 68
AUSTIN, TEXAS

Execution:

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: 9/23/10
Signed on behalf of the limited partnership
By (general partner)

TX 2010

Ver. 1.0

05-102

(9-09/29)

■ Tcode 13196

TEXAS FRANCHISE TAX PUBLIC INFORMATION REPORT

To be filed by Corporations, Limited Liability Companies (LLCS) and Financial Institutions

This report MUST be signed and filed to satisfy franchise tax requirements

■ Taxpayer number

■ Report year

You have certain rights under Chapter 552 and 559, Government Code, to review, request, and correct information we have on file about you. Contact us at: (512) 463-4600, or (800) 252-1381, toll free nationwide.

17529683413

2010

Taxpayer name
 SPRUCE SYSTEMS, INC.

Mailing address
 1801 N. LAMAR ST., SUITE 200

City State
 DALLAS TX

ZIP Code Plus 4
 75202

Secretary of State file number or
 Comptroller file number
 0800038783

☐ Check box if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.

Principal office

1801 N. LAMAR ST., SUITE 200 DALLAS TX 75202

Principal place of business

1801 N. LAMAR ST., SUITE 200 DALLAS TX 75202



1752968341310

Please sign below!

Officer, director and member information is reported as of the date a Public Information Report is completed. The information is updated annually as part of the franchise tax report. There is no requirement or procedure for supplementing the information as officers, directors, or members change throughout the year.

SECTION A Name, title and mailing address of each officer, director or member.

Name

Title

Director

m m d d y y

☒ YES

Term
 expiration

JERE W. THOMPSON, JR.

PRESIDENT

Mailing address

1801 N. LAMAR ST. STE 200

City
 DALLAS

State ZIP Code
 TX 75202

Name

Title

Director

m m d d y y

☐ YES

Term
 expiration

Mailing address

City

State ZIP Code

Name

Title

Director

m m d d y y

☐ YES

Term
 expiration

Mailing address

City

State ZIP Code

SECTION B Enter the information required for each corporation or LLC, if any, in which this entity owns an interest of ten percent (10%) or more.

Name of owned (subsidiary) corporation or limited liability company

State of formation

Texas SOS file number, if any

Percentage of Ownership

NONE

Name of owned (subsidiary) corporation or limited liability company

State of formation

Texas SOS file number, if any

Percentage of Ownership

SECTION C Enter the information required for each corporation or LLC, if any, that owns an interest of ten percent (10%) or more in this entity

or limited liability company.

Name of owned (parent) corporation or limited liability company

State of formation

Texas SOS file number, if any

Percentage of Ownership

NONE

Registered agent and registered office currently on file. (See instructions if you need to make changes)

Check box if you need forms to change

Agent: JERE W. THOMPSON, JR.

☐ the registered agent or registered office information.

Office: 1801 N. LAMAR ST., SUITE 200

City
 DALLAS

State
 TX

ZIP Code
 75202

The above information is required by Section 171.203 of the Tax Code for each corporation or limited liability company that files a Texas Franchise Tax Report. Use additional sheets for Sections A, B, and C, if necessary. The information will be available for public inspection.

I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief, as of the date below, and that a copy of this report has been mailed to each person named in this report who is an officer, director or member and who is not currently employed by this, or a related, corporation or limited liability company.

sign
 here

Title

Date

Area code and phone number

PRESIDENT

10/27/2010

214-270-1776

Texas Comptroller Official Use Only



VE/DE

PIR IND



EEOC Form 161-B (11/09)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: **Nicole Gubin**
Po Box 671031
Flushing, NY 11367

From: **New York District Office**
33 Whitehall Street
5th Floor
New York, NY 10004

☐ On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

520-2011-02755

Debra L. Curry,
Investigator

(212) 336-3768

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA **must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

- ☐ More than 180 days have passed since the filing of this charge.
- ☒ Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.
- ☒ The EEOC is terminating its processing of this charge.
- ☐ The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:

- ☐ The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice**. Otherwise, your right to sue based on the above-numbered charge will be lost.
- ☐ The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Enclosures(s)


Kevin J. Barry,
District Director

7/13/11
(Date Mailed)

cc: **Director Human Resources**
AMBIT ENERGY
1801 N. Lamar Street, Ste. 201
Dallas, TX 75202

Exhibit "C"

THOMPSON & KNIGHT LLP

ATTORNEYS AND COUNSELORS

ONE ARTS PLAZA
1722 ROUTH STREET • SUITE 1500
DALLAS, TEXAS 75201-2533
(214) 969-1700
FAX (214) 969-1751
www.tklaw.com

DIRECT DIAL: (214) 969-1355
EMAIL: Matthew.Mitzner@tklaw.com

AUSTIN
DALLAS
FORT WORTH
HOUSTON
NEW YORK

ALGIERS
LONDON
MEXICO CITY
MONTERREY
PARIS

August 5, 2011

Via Hand Delivery

Molly Bargaquest
Vice President, Case Management Center
American Arbitration Association
Two Galleria Tower
13455 Noel Road, Suite 1750
Dallas, TX 75240

Re: *Ambit Energy, L.P. v. Nicole Gubin and BH Seven, LLC.*
Arbitration No. _____;

Dear :

I have enclosed the original and two copies of the Arbitration Demand and a check for \$400.00 for the filing fee in connection with the above-referenced matter.

Please file one copy and return two file-stamped copies to me in the enclosed stamped, self-addressed envelope.

Thank you for your attention to this matter.

Sincerely,



Matthew M. Mitzner

MM:ws

Enclosures

cc: Flora Rainer, Esq. w/enclosures— *Via Certified Mail*, RRR No. 7009 1680 0000 6404 5723

518218 000002 DALLAS 2771895.1

Exhibit "B"

AMERICAN ARBITRATION ASSOCIATION

AMBIT ENERGY, L.P.,	§	
	§	
CLAIMANT,	§	
	§	
vs.	§	ARBITRATION NO. _____ AAA
	§	
NICOLE GUBIN AND BH SEVEN, LLC,	§	
	§	
RESPONDENTS.	§	

ARBITRATION DEMAND

Pursuant to AAA Rule 4(a)(i), Claimant Ambit Energy, L.P. ("Ambit") files this Demand for Arbitration against Nicole Gubin and BH Seven, LLC (collectively, "Respondents") pursuant to the parties' contractual Arbitration Clause. A Form Demand for Arbitration (Exhibit 1) and a copy of the parties' Arbitration Clause (Exhibit 2) are attached pursuant to AAA Rule 4(a)(ii).

I. BACKGROUND

→ Plaintiff Nicole Gubin made and entered into an Independent Consultant Application and Agreement (hereinafter, "Consultant Agreement," [Exhibit 3] and which is incorporated by reference)) with Ambit in July of 2007. The Consultant Agreement includes an arbitration provision and Ambit's Policies and Procedures (Exhibit 4, and which is incorporated by reference), which the Consultant Agreement specifically refers to and incorporates therein. (Exh. 2, at ¶ 11) Ambit's Policies and Procedures *also* include a binding arbitration provision. (Exh. 4, at § 9.2.2) In agreeing to the Consultant Agreement, Ms. Gubin also agreed to abide by and act in accordance with Ambit's

Policies and Procedures, verifying she had received a copy of the same. (Exh. 2, at ¶ 3)

A dispute has arisen between Respondents¹ and Ambit concerning compensations that Respondents claim they are owed under the Consultant Agreement. Ms. Gubin and BH Seven, LLC subsequently brought suit in United States District Court for the Eastern District of New York—a dispute to which binding arbitration applies. (See Exh. 2)

**II. REQUEST FOR DECLARATION THAT AMBIT IS NOT LIABLE
AND RESPONDENTS ARE NOT OWED UNDER THE CONSULTANT AGREEMENT**

A justiciable, real, and substantial controversy involving tangible interests about the rights of the parties exists, and a declaration would resolve the controversy. Accordingly, Pursuant to Chapter 37 of the TEXAS CIVIL PRACTICE & REMEDIES CODE (the Declaratory Judgment Act), Ambit seeks a judgment declaring and determining that Ambit is not liable and Respondents are not owed under the Consultant Agreement.

III. CONCLUSION

Thus, through arbitration, Ambit seeks a declaratory judgment stating that Ambit is not liable and Respondents are not owed in any way under the Consultant Agreement.

¹ According to Respondents' allegations, in October of last year, Ms. Gubin requested that her interests be transferred to BH Seven, LLC, thereby putatively involving BH Seven, LLC in the controversy between the parties.

DATE: August 8, 2011

Respectfully submitted,

THOMPSON & KNIGHT, LLP

By: 

Stephen C. Rasch
Texas Bar No. 16551420
stephen.rasch@tklaw.com

Matthew M. Mitzner
Texas Bar No. 24068911
matthew.mitzner@tklaw.com

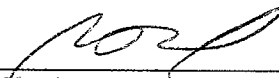
1722 Routh Street, Suite 1500
Dallas, Texas 75201
Tel. 214.969.1700
Fax 214.999.1751

ATTORNEYS FOR CLAIMANT
AMBIT ENERGY, L.P.

518218 000002 DALLAS 2770796.1

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on all counsel of record by certified mail on this 8th day of August, 2011.


Stephen C. Rasch



American Arbitration Association
Dispute Resolution Services Worldwide

**COMMERCIAL ARBITRATION RULES
DEMAND FOR ARBITRATION**

MEDIATION: If you would like the AAA to contact the other parties and attempt to arrange a mediation, please check this box. ☐
There is no additional administrative fee for this service.

Name of Respondent Nicole Gubin and BH Seven, LLC			Name of Representative (if known) Flora Rainer		
Address 160-20 79th Avenue			Name of Firm (if applicable) Law Office of Flora Rainer, Esq.		
			Representative's Address 7234 73rd Street		
City Flushing	State NY	Zip Code 11366-	City Glendale	State NY	Zip Code 11385-
Phone No. 347.804.6933		Fax No.	Phone No. 718.644.0214		Fax No. 718.821.3407
Email Address: freeenergy101@gmail.com			Email Address: FloraEsq2@aol.com		

The named claimant, a party to an arbitration agreement dated July 2007, which provides for arbitration under the Commercial Arbitration Rules of the American Arbitration Association, hereby demands arbitration.

THE NATURE OF THE DISPUTE

Claimant Ambit Energy, L.P. seeks a declaratory judgment that it is not liable and Respondents are not owed under the Independent Consultant Application and Agreement.

Dollar Amount of Claim \$0.00	Other Relief Sought: <input type="checkbox"/> Attorneys Fees <input type="checkbox"/> Interest <input type="checkbox"/> Arbitration Costs <input type="checkbox"/> Punitive/ Exemplary <input checked="" type="checkbox"/> Other Declaration
-------------------------------	---

Amount Enclosed \$ 400.00 In accordance with Fee Schedule: ☒ Flexible Fee Schedule ☐ Standard Fee Schedule

PLEASE DESCRIBE APPROPRIATE QUALIFICATIONS FOR ARBITRATOR(S) TO BE APPOINTED TO HEAR THIS DISPUTE:

There shall be one arbitrator, an attorney with experience in business law transactions; there is a strong preference for an attorney knowledgeable in the direct selling industry.

Hearing locale Dallas, Texas (check one) ☐ Requested by Claimant ☒ Locale provision included in the contract

Estimated time needed for hearings overall: _____ hours or <u>2.00</u> days	Type of Business: Claimant <u>Consumer Energy Provider</u> Respondent <u>Consumer Energy Marketer</u>
--	--

Is this a dispute between a business and a consumer? ☐ Yes ☒ No Does this dispute arise out of an employment relationship? ☐ Yes ☒ No

If this dispute arises out of an employment relationship, what was/is the employee's annual wage range? Note: This question is required by California law. ☐ Less than \$100,000 ☐ \$100,000 - \$250,000 ☐ Over \$250,000

You are hereby notified that a copy of our arbitration agreement and this demand are being filed with the American Arbitration Association with a request that it commence administration of the arbitration. The AAA will provide notice of your opportunity to file an answering statement.

Signature (may be signed by a representative) <u>[Signature]</u> Date: <u>8.4.11</u>		Name of Representative Stephen C. Rasch, Matthew M. Mitzner	
Name of Claimant Ambit Energy, L.P.		Name of Firm (if applicable) Thompson & Knight LLP	
Address (to be used in connection with this case) 1801 North Lamar Street, Suite 200		Representative's Address 1722 Routh Street, Ste. 1500	
City Dallas	State TX	Zip Code 75202-	City Dallas
State TX	Zip Code 75201-	City Dallas	State TX
Phone No.	Fax No.	Phone No. 214.969.1700	Fax No. 214.999.1751
Email Address:		Email Address: stephen.rasch@tklaw.com; matthew.mitzner@tklaw.com	

To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with the filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100 Voorhees, NJ 08043. Send the original Demand to the Arbitration Agreement.

Please visit our website at www.adr.org if you would like to learn more. Case Filing Services can be reached at 877-495-4185.

EXHIBIT

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